ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Telephone Operating Cos.	)	CC Docket No. 98-79
GTOC Tariff No. 1	)	
GTOC Transmittal No. 1148	)	

OPPOSITION OF U S WEST, INC. TO PETITIONS OF MCI WORLDCOM AND NARUC

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SUMMARY

Petitioners MCI WorldCom and NARUC, in their petitions for clarification and/or reconsideration of the GTE DSL Order, ask the Commission to repudiate its finding that ADSL Internet traffic is jurisdictionally interstate. There is no basis for such a reversal. As the Commission properly concluded in the GTE DSL Order, well established precedent requires that the Commission treat an ADSL Internet communication as a single, end-to-end communication between the end user and the destination Internet site. Petitioners offer no new analysis to contradict that conclusion. Rather, they simply repeat their contention that an ADSL Internet communication should be treated as one transmission from the end user to the ISP POP and a second from the ISP POP to the destination Internet site. The Commission already has considered and soundly rejected that position. Equally without merit is MCI WorldCom's suggestion that the Commission determine the percentage of ADSL traffic that is interstate on a user-by-user rather than an aggregate basis; technological limitations make such individual determinations impossible. And taking no position at all on the jurisdictional classification of ADSL Internet traffic, as petitioners also advocate, would involve ducking the core issue in this proceeding and would create unnecessary and harmful regulatory uncertainty.

Petitioners' requests for clarification are likewise unwarranted. There is no need to "clarify" that purely intrastate uses of ADSL are properly tariffed at the state level, or that GTE's ADSL service is subject to existing cost allocation rules — both propositions are uncontroversial. NARUC's further claim that jurisdictionally interstate ADSL Internet service may be tariffed at both the federal and state levels is entirely baseless. So is NARUC's apparent suggestion that 100 percent of local loop costs should be assigned to the interstate jurisdiction whenever a customer uses DSL. The Commission should reject both petitions.

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Pursuant to 47 C.F.R. § 1.106(g) and the Commission's Public Notice of December 4, 1998, U S WEST, Inc. ("U S WEST") respectfully submits this opposition to the petitions of MCI WorldCom and the National Association of Regulatory Utility Commissioners ("NARUC") for clarification and/or reconsideration of the Commission's October 30, 1998 GTE DSL Order.[1/]

MCI WorldCom and NARUC (collectively, "petitioners") attempt to portray their petitions as relatively modest requests — MCI WorldCom by emphasizing that it does not seek invalidation of GTE's federal tariff,[2/] and NARUC by suggesting that its desired relief could be achieved through mere clarification of the GTE DSL Order.[3/] In reality, both petitions urge the Commission to repudiate the fundamental underpinning of the GTE DSL Order: the conclusion that the jurisdictional treatment of high speed Internet traffic carried over GTE's ADSL facilities

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1/ GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order, FCC 98-292 (rel. Oct. 30, 1998) ("GTE DSL Order" or "Order").

2/ See MCI WorldCom Pet. at 1 ("MCI WorldCom does not seek reconsideration of the ADSL Tariff Order's conclusion that GTE's ADSL service is properly tariffed at the federal level.").

3/ See NARUC Pet. at 1, 7.

depends on the ultimate end point of the Internet communication, not on the location of the ISP the customer uses. The Commission's decision on this point was well reasoned and strongly supported by established Commission precedent. The petitions of MCI WorldCom and NARUC do no more than recycle the same arguments that the Commission considered and rejected in reaching its decision. In short, the petitioners offer no sound reason for the Commission to renounce the rationale underlying the GTE DSL Order, and there is none.

Nor is there any merit to the petitioners' requests for "clarification." No clarification is needed to establish that ADSL services may be used for intrastate purposes and in such circumstances would be subject to state rather than federal tariffs. NARUC's suggestion that states may require state-level tariffing of ADSL services used to provide high speed Internet access — the precise services that the GTE DSL Order finds to be jurisdictionally interstate — is entirely baseless and would amount to a reversal of the Commission's decision, not a clarification. Finally, NARUC's requested clarification concerning the applicability of cost allocation procedures is simply unnecessary.

Accordingly, the Commission should reject both petitions.

I. THE COMMISSION SHOULD NOT REPUDIATE ITS FINDING THAT ADSL INTERNET ACCESS IS JURISDICTIONALLY INTERSTATE.

Contrary to petitioners' arguments, the Commission's ruling that the jurisdictional end point of an ADSL Internet communication is the destination Internet site, rather than the ISP's POP, is in no way inconsistent with the regulatory regime governing ISPs. There likewise is no basis for the Commission to abandon its sound conclusion that more than ten percent of ADSL Internet traffic is destined for sites in other states or countries. And the assertion that the

Commission should have simply ducked the issue of the classification of ADSL Internet traffic ignores the central importance of that question to this proceeding and the need for prompt resolution of the issue.

A. The Commission's Ruling That the Relevant Jurisdictional End Point of an ADSL Internet Communication Is the Internet Site Ultimately Accessed By the End User, Rather than the ISP's POP, Is Correct on the Merits and Is Fully Consistent With All Applicable Legal Decisions and Precedents.

Petitioners urge the Commission to renounce the "end-to-end" analysis in its GTE DSL Order — that is, the Commission's decision to treat an ADSL Internet communication as part and parcel of a single, end-to-end transmission between the end user and the destination Internet site. Petitioners contend that this decision is inconsistent with the Commission's treatment of ISPs and the distinction between information services and telecommunications, and that the Commission must instead treat an ADSL Internet communication as terminating at the ISP's POP. These arguments are no more than repackaged versions of what MCI WorldCom and other parties said in their original comments. The Commission properly rejected those arguments in the GTE DSL Order,[4/] and it should reject them again here for identical reasons.

MCI WorldCom contends that, in carrying out its jurisdictional analysis, the Commission should have treated the ADSL and Internet access services separately, because the first is telecommunications and the second is enhanced.[5/] This argument is utterly without merit, for the reasons set forth in paragraph 20 of the Order. The Commission "has never found that

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4/ See GTE DSL Order ¶¶ 15, 19-21; MCI WorldCom Comments on Direct Cases, CC Docket No. 98-79 et al. (Sept. 18, 1998) at 18-20.

5/ See MCI WorldCom Pet. at 3 (arguing that the Commission's end-to-end analysis somehow "treats the ISP as if it is a provider of telecommunications").

'telecommunications' ends where 'enhanced' information service begins."[6] On the contrary, the Commission consistently has ruled that information services "incorporate[] as a necessary, bundled element a[] . . . telecommunications transmission component."[7] The ISP's bundling of the transmission component into a package that is an "information service" does not alter the fact that ADSL high speed Internet access involves a continuous transmission of data, over telecommunications facilities, between the end user and a distant Internet site. In short, the GTE DSL Order simply confirms that, consistent with well established precedent,[8] the Commission will look to the end-to-end nature of a transmission in determining its jurisdictional classification, not to the beginnings or ends of the particular telecommunications and/or enhanced services that are involved in that transmission.

NARUC erroneously maintains that the Commission's jurisdictional analysis "suggests treatment of enhanced service providers as common carriers as opposed to end-users."[9] This statement presumably is intended to imply an inconsistency with previous Commission orders classifying enhanced service providers ("ESPs") as end users for purposes of switched access

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6/ GTE DSL Order ¶ 20.

7/ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-489 (rel. Dec. 24, 1996) ¶¶ 57, 115; see also GTE DSL Order ¶ 20 ("Under the definition of information service added by the 1996 Act, an information service, while not a telecommunications service itself, is provided via telecommunications.").

8/ See GTE DSL Order ¶¶ 17-18 (citing Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rcd. 1619 (1992); Teleconnect Company v. Bell Telephone Company of Penn., 10 FCC Rcd. 1626 (1995); Southwestern Bell Telephone Company, 3 FCC Rcd. 2339 (1988)).

9/ NARUC Pet. at 8.

charges. But the Commission's decision to exempt ESPs from paying access charges has no bearing whatsoever on the jurisdictional nature of the ADSL traffic at issue in this proceeding. As the Commission rightly observed in the GTE DSL Order,

> [t]he fact that ESPs are exempt from certain access charges and purchase their PSTN links through local tariffs does not transform the nature of traffic routed to ESPs. . . . We emphasize that the Commission's decision to treat ISPs as end users for access charge purposes does not affect the Commission's ability to exercise jurisdiction over such traffic.[10/]

In other words, there is nothing inconsistent in the Commission's analyzing the underlying transmission on an end-to-end basis while at the same time treating the ISP as an information service provider and, with respect to access charges, an end user. Indeed, the Commission has long taken just such an approach with respect to ESPs. The Commission "traditionally has characterized the link from an end user to an ESP as an interstate access service"[11/] — a characterization that necessarily implies that that link is part of a longer transmission that continues beyond the ESP to an out-of-state location.[12/] At the same time, the Commission has maintained the distinction between ESPs and telecommunications providers and has treated ESPs as end users for access charge purposes. The Commission has never perceived a conflict between these positions, and there is none.

10/ GTE DSL Order ¶ 21.

11/ Id.

12/ Moreover, the Commission's rules require ESPs to pay a type of interstate access charges — the special access surcharge — when they use local facilities to deliver interstate enhanced services to customers. See 47 C.F.R. §§ 69.5(c), 69.115(e)(6). Thus, a local call from a customer to an ESP is treated as part of a longer transmission that continues beyond the ESP's in-state premises.

MCI WorldCom makes the further, novel argument that the BellSouth MemoryCall decision,[13] which the Commission and numerous parties have cited as supporting the jurisdictional analysis in the GTE DSL Order,[14] actually supports MCI WorldCom's claim that the ISP POP is the relevant jurisdictional end point of an Internet communication. According to MCI WorldCom, BellSouth Memory Call somehow establishes a general principle that an enhanced service provider's "facilities and apparatus" constitute a jurisdictional end point of a communication.[15] The decision establishes no such principle. Rather, the Commission there confirmed that, where there is a "continuous, two-way transmission path,"[16] the jurisdictional end points are the beginning and end of the path, rather than intermediate points along the way. In BellSouth Memory Call, BellSouth's voice mail equipment site was a proper jurisdictional end point because it constituted the actual end of a "continuous path of communications across state lines between the caller and the voice mail service,"[17] not because such facilities automatically constitute a jurisdictional end point. In the Internet context, an ISP's facilities are merely an intermediate point along a continuous communications pathway between an end user and distant Internet sites; the call proceeds past the facilities to transmit data to sites located elsewhere.

13/ Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd. 1619 (1992) ("BellSouth MemoryCall").

14/ See, e.g., GTE DSL Order ¶¶ 17,19; Comments of U S WEST at 6-7 (Sept. 18, 1998); Direct Case of GTE at 12-13.

15/ MCI WorldCom Pet. at 6-7.

16/ 7 FCC Rcd. at 1620 ¶ 9.

17/ Id.

Nor is MCI WorldCom helped by its argument that calls to the BellSouth voice mail platform from in-state end users may be jurisdictionally intrastate.[18] As a preliminary matter, the BellSouth MemoryCall decision did not address the jurisdictional treatment of calls from in-state users. But if such calls are jurisdictionally intrastate, it is because they do not establish a "continuous, two-way transmission path" that crosses state borders: The end user may retrieve messages left by out-of-state callers, but those messages often have been left hours or even days before. Thus, there would be a logical basis for treating in-state calls to the voice mail platform as jurisdictionally intrastate. Such intrastate treatment would not mean, as MCI WorldCom would have it, that "physically intrastate telecommunications between an end user and an ISP POP" are automatically jurisdictionally intrastate.[19] Indeed, MCI WorldCom does not even attempt to explain how such a focus on the physical location of facilities could be squared with the well established principle that "purely intrastate facilities . . . may become subject to FCC regulation to the extent of their interstate use."[20]

MCI WorldCom also argues that, "in BellSouth MemoryCall, there was only one type of service involved in the end-to-end communication — a telecommunications service."[21] That is flatly wrong. There, as here, there were two legs to the transmission, one consisting of a basic service and one of an enhanced service. The first leg of the end-to-end communication at issue in BellSouth MemoryCall, from an out-of-state caller to the recipient's switch, was an ordinary

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18/ See MCI WorldCom Pet. at 7.

19/ Id.

20/ NARUC v. FCC, 746 F.2d 1492, 1498 (D.C. Cir. 1984).

21/ MCI WorldCom Pet. at 6 (emphasis added).

telecommunications service. But the second leg, from the switch to the voice mail platform, was an integral part of BellSouth's voice mail service — an enhanced service. Indeed, the sole function of the second leg was to make the enhanced service possible. In ruling that a call from an out-of-state caller to the called party's switch and on to the message platform was a single interstate communication, the Commission clearly and correctly embraced the principle that a communication consisting partly of a telecommunications service and partly of a telecommunication provided as part of an enhanced service can and should be viewed as constituting a single, end-to-end communication, rather than as two separate calls.

B. The Commission Should Not Reconsider Its Conclusion That More Than Ten Percent of ADSL Internet Traffic Is Destined for Sites in Other States and Countries.

MCI WorldCom asks the Commission to reconsider its decision that more than ten percent of ADSL Internet traffic is destined for websites in other states or countries. MCI WorldCom's rationale is that, even though the Commission's conclusion may be valid with respect to most Internet users, "[i]t is entirely possible that less than ten percent of certain end users' Internet traffic may be destined for websites in other states or countries."[22/]

That rationale is pure speculation; the broad geographic scope of the Internet and "World Wide Web" is one of the medium's chief advantages, and MCI WorldCom offers no reason to believe that any significant number of people somehow confine their Internet usage to in-state sites. In any event, it is not technically possible to determine how much of an individual Internet user's traffic is intrastate versus interstate, because Internet routers have not been designed to

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22/ Id. at 10 (emphasis added).

distinguish between intrastate and interstate traffic.[23] Therefore, even if some small subset of individuals use the Internet almost exclusively to connect with intrastate websites, there is no way to determine who those individuals are. Even the individuals themselves would be unlikely to know for sure: The website of a company or organization headquartered in one state can be hosted just as easily by a computer located in a different state, unbeknownst to users who access the site. Given these important technical limitations, the Commission's best (and perhaps only) option is to make an overall predictive judgment about the nature of Internet traffic in general, and to classify such traffic accordingly. There is no question that, overall, the interstate and foreign components of Internet traffic exceed the Commission's ten percent de minimis threshold — probably by a wide margin.[24]

C. The Commission Was Right To Address the Classification of ADSL Internet Traffic in This Proceeding.

Petitioners also suggest that the Commission should not have addressed the jurisdictional classification of ADSL Internet traffic in this proceeding. MCI WorldCom argues that Internet access is merely one potential use of ADSL technology, and that "the Commission did not have to examine any particular use of GTE's ADSL service" to make a determination in this proceeding.[25] In MCI WorldCom's view, the Commission could simply have approved GTE's tariff on the ground that ADSL services "do not belong inherently to one jurisdiction or the

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[23] See Kevin Werbach, Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper No. 29, at 45 (Mar. 1997).

[24] See Direct Case of GTE at 15-17.

[25] MCI WorldCom Pet. at 8.

other."[26] But for the Commission to find that GTE's federal tariff is appropriate, it needed to find that at least some particular use of ADSL is interstate. Internet access was the only use that GTE identified specifically and indeed was described as the main purpose of GTE's service.[27] Accordingly, the Commission sensibly examined that use and analyzed its jurisdictional classification.

Moreover, failing to address the jurisdictional classification of Internet traffic would have meant ducking the heart of the issue at stake in this proceeding, and would simply have multiplied the amount of litigation needed to resolve the resulting regulatory ambiguity. GTE's Direct Case presented the Commission with a service designed and marketed specifically to "provide[] a high-speed access connection between an end user and the Internet."[28] As a practical matter, then, Internet access is by far the dominant intended use of GTE's ADSL service. If the Commission had sidestepped the regulatory treatment of that use, the question would have arisen again almost immediately: As soon as GTE began to offer ADSL to customers for the intended Internet use, both GTE and its potential customers would have needed to resolve whether federal or state tariffs would apply and would immediately have sought Commission guidance. In short, GTE cannot fully launch its ADSL service until the jurisdictional treatment of ADSL Internet traffic is resolved, so ignoring the question in this proceeding would merely give rise to another proceeding on the same issue. Deferring the issue

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26/ Id. at 8-9.

27/ Direct Case of GTE at 4.

28/ Id.

to a later proceeding would have the undesirable effect of unnecessarily slowing the availability of high speed Internet access to consumers right on the eve of their delivery.

NARUC argues that the Commission should have avoided the Internet traffic issue because the Commission's determination on that point may have implications for future Commission proceedings.[29/] But every Commission decision stands as a precedent that will affect the agency's deliberations in future proceedings; if the agency were to repudiate valid and well reasoned decisions out of fear of establishing precedents, it would never issue any decisions at all. Rather than shy away from creating precedent, the Commission properly decided the issues raised in this proceeding based on the particular factual context presented. The decision was by no means an abstract one, and it was appropriately narrow: The Commission was careful to emphasize that "our decision in this proceeding relates only to the jurisdictional treatment of the high speed access connection between an end user subscriber and an ISP, as described in GTE's tariff."[30/]

As new factual contexts arise, the Commission will be free to consider legally sound rationales for appropriately distinguishing later cases. However, such different circumstances can be considered when they actually arise. The Commission should not renounce a legally correct decision based on NARUC's vague speculation about potential implications for future

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29/ NARUC Pet. at 7-8.

30/ GTE DSL Order ¶ 29; see also id. ¶ 2 ("We emphasize that we decide here only the issue designated in our investigation of GTE's federal tariff for ADSL service") & n.1 ("We emphasize that our decision concerning the jurisdictional treatment of GTE's ADSL service is limited to the transport of data from an end user over GTE's frame relay network. Regulation of circuit switched voice and data calls carried over the same ADSL-conditioned loop . . . is unaffected by GTE's offering and this decision.").

proceedings.

NARUC also suggests that the Commission should have deferred consideration of the jurisdictional treatment of Internet traffic until after the Supreme Court issues its decision in Iowa Utilities Board v. FCC.[31/] That argument is frivolous. Certain jurisdictional issues (specifically, jurisdiction over the pricing of interconnection and unbundled network elements) will be decided in that case, but they are not in any way linked to the jurisdictional question presented here. In the highly unlikely event that the Supreme Court chooses to make some sweeping proclamation as to the general distinction between Commission and state jurisdiction that would somehow affect the rationale of the GTE DSL Order, the Commission can at that time make any necessary adjustments to its rules.

II. PETITIONERS' REQUESTED CLARIFICATIONS ARE UNWARRANTED.

The clarifications petitioners request regarding the intrastate tariffing of ADSL services concern points that are either unnecessary or utterly without merit. NARUC's requested clarification regarding the applicability of cost allocation procedures also is unnecessary.

A. The Requested Clarifications Concerning Intrastate Tariffing of ADSL Services Are Either Unnecessary or Untenable.

MCI WorldCom asserts that "GTE's ADSL service is properly tariffed at both the federal and state levels."[32/] NARUC likewise maintains that both "interstate and intrastate tariffs

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31/ NARUC Pet. at 8.

32/ MCI WorldCom Pet. at 9 (emphasis added).

may be filed for the loop and service configurations in the GTE/BOC tariffs."[33] These clarification requests differ in their substance but are equally without merit.

MCI WorldCom asks simply that the Commission "clarify that ADSL services (and other xDSL services) are not inherently Internet-related services, and are not inherently interstate," and that "the classification of an xDSL service will depend on the use to which it is put."[34] That clarification is unnecessary because it is uncontroversial. Nobody debates that, where ADSL technology is used purely for jurisdictionally intrastate purposes, the service is appropriately tariffed at the state level. As U S WEST observed in its comments in support of GTE's Direct Case, "some DSL connections may be intrastate in nature — for example, certain work-at-home applications."[35] The Commission in the Order expressly confirmed that such intrastate uses will require intrastate tariffs: "Should GTE or any other incumbent LEC offer an xDSL service that is intrastate in nature, for example, a 'work-at-home' application where a subscriber could connect to a corporate local area network, that service should be tariffed at the state level."[36] Given this unambiguous statement, no further clarification is necessary.[37]

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[33] NARUC Pet. at 3.

[34] MCI WorldCom Pet. at 9.

[35] Comments of U S WEST at 2 n.1.

[36] GTE DSL Order ¶ 27. Even in the case of a connection to a corporate local area network, the service could qualify for interstate tariffs if more than ten percent of the end user's use of the network consisted of, for example, accessing interstate information services such as Lexis/Nexis or sending and receiving interstate e-mail.

[37] Nor is the Commission's clear statement contradicted by the holding of the Order. The Order focuses specifically on a GTE ADSL offering that "permits Internet Service Providers . . . to provide their end user customers with high-speed access to the Internet." GTE DSL Order

(continued...)

NARUC asks the Commission to "clarify that its Order does not preclude States from requiring intrastate xDSL tariffs for loop and service configurations like, and specifically including, the one at issue in this proceeding."[38] This request suggests a position that is unsupported and untenable. NARUC asks the Commission to find that the specific service at issue in this proceeding — ADSL service used by ISPs to provide end users with high speed Internet access — may be subject to interstate and intrastate tariffs simultaneously.[39] But the core holding of the Order is that GTE's particular service is jurisdictionally interstate and therefore subject to federal tariffing. NARUC does not and cannot explain how a carrier could file a state tariff for an interstate service, much less how a state tariff could coexist with a federal one for a single service offering to a particular customer. A customer purchases a communications service under either a state or federal tariff; that purchase is then subject to the governing jurisdiction's rules concerning, for example, procedures for modifying the terms of the tariff and for the filing of customer complaints. Simultaneous compliance with both jurisdictions' rules would not be possible.

Moreover, permitting states to require state tariffing of a service that the Commission has declared to be interstate would threaten to overturn the entire system of separations. Would states also then be permitted to require state-level tariffing of rates for interstate exchange

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37/ (...continued)
¶ 1. The Commission rightly concluded that such a service is jurisdictionally interstate and hence subject to a federal tariff. That holding in no way precludes a later finding that a different ADSL offering is jurisdictionally intrastate and hence subject to state level tariffing.

38/ NARUC Pet. at 3 (emphasis added).

39/ See NARUC Pet. at 2-3.

access? For interstate long distance telephony? The separations process "facilitates the creation or recognition of distinct spheres of regulation."[40/] NARUC's request asks the Commission to ignore the distinction between the two spheres and thus is fundamentally incompatible with the established system of separations. The Commission should deny NARUC's clarification request.

B. NARUC Fails To Demonstrate Any Need for Clarification Regarding the Applicability of Cost Allocation Procedures.

NARUC further asks for clarification "that GTE must comply with the current rules" concerning the allocation of costs between the intrastate and interstate jurisdictions.[41/] Stated this way, the point is obvious and requires no clarification — GTE plainly is obligated to comply with all applicable Commission rules currently in force.

The crux of NARUC's argument seems to be that the GTE tariff as currently structured "appears to avoid consistency with both the rules and general principles of cost allocation."[42/] NARUC's complaint is that "it appears the GTE tariff assigns 75 percent of the local loop costs associated with xDSL to the intrastate jurisdiction using the general allocation factor for common lines, while all (100 percent) of the xDSL revenues would go to the interstate jurisdiction," resulting in an "apparent inconsistent allocation of costs and revenues."[43/]

If NARUC is suggesting that 100 percent of the local loop costs should be assigned to the interstate jurisdiction whenever a customer uses ADSL, it is simply wrong. Local loops are used

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40/ Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 375 (1986) (citation omitted).

41/ NARUC Pet. at 6.

42/ Id.

43/ Id.

to deliver various intrastate and interstate services; accordingly, current rules divide the cost of the loop between the two jurisdictions. Specifically, the Commission has assigned 75 percent of the cost of each loop to the intrastate jurisdiction and 25 percent to the interstate. That cost allocation decision is standardized and is not affected by the actual usage patterns of individual users; the 75/25 split would apply even to loops whose users made intrastate calls only or interstate calls only.

The use of the loop to deliver a new type of service — in this case, ADSL — likewise has no impact on the basic division of costs between the intrastate and interstate jurisdictions. A customer's decision to use his or her local loop for ADSL Internet access in addition to local telephony, intrastate exchange access, and interstate exchange access may increase the proportion of the customer's loop usage that is jurisdictionally interstate, but, as noted, the 75/25 cost allocation rule applies *regardless* of the individual's actual loop usage patterns. Nor is there any merit to the suggestion that it is somehow unfair or improper to permit intrastate services to bear some of the costs of a loop that is also used to deliver ADSL. As the Commission observed, a loop is "capable of supporting a variety of services in addition to ADSL, such as local exchange service and access services. Competitors need not recover their costs from ADSL alone."[44/]

Changes in the types of services delivered over local loops may ultimately warrant some reconsideration of existing cost allocation and separations rules. But, as NARUC itself observes,[45/] questions of cost allocation and separations reform are currently pending before the

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44/ GTE DSL Order ¶ 31.

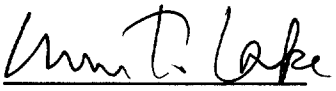
45/ NARUC Pet. at 5.

Separations Joint Board.[46/] There is no need to prejudge such questions here. Absent a clear violation of the Commission's current rules, the Commission should not address cost allocation issues in this proceeding.

CONCLUSION

For the reasons stated above, the Commission should reject the petitions of MCI WorldCom and NARUC for reconsideration and/or clarification.

Respectfully submitted,



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46/ See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket 80-286, 12 FCC Rcd. 22120 (1997); see also NARUC Pet. at 5 & n.4.

CERTIFICATE OF SERVICE

I, David M. Sohn, do hereby certify that on this 5th day of January 1999, I have caused a copy of the foregoing **Opposition of U S WEST, Inc. to Petitions of MCI WorldCom and NARUC** to be served either by hand delivery or by first class U.S. mail, postage prepaid, upon the parties listed on the attached Service List.

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